

11
8/7/01
w/

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CINDY L. RIGG,

Plaintiff,

v.

COUNTY OF DAUPHIN,
DAUPHIN COUNTY SHERIFF'S
DEPARTMENT, and
RALPH MCALLISTER

Defendants.

CIVIL NO. 4:CV-01-0967
JUDGE MCCLURE

FILED
HARRISBURG

AUG 06 2001

MARY E. D'ANDREA, CLERK
Per *AS*
DEPUTY CLERK

**DEFENDANT MCALLISTER'S MOTION TO DISMISS OR, IN THE
ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

AND NOW Ralph McAllister, through his attorney, Michael J. Kane, respectfully requests this Court to dismiss this action pursuant to F.R.Civ.P. 12(b)(6) or, in the alternative, to grant summary judgment pursuant to F.R.Civ.P. 56(c) based on Plaintiff's Complaint and Affidavit of Defendant Ralph McAllister, attached hereto. A brief in support of this Motion will be filed in accordance with Local Rule 7.5.

Counsel hereby certifies that he has sought the concurrence of Plaintiff's counsel and he does not concur. Counsel hereby certifies that he has sought the concurrence James D. Young, counsel for Defendants County of Dauphin and Dauphin County Sheriff's Department and he does concur.

Respectfully submitted,

KANE AND MACKIN, LLP

By:

Michael J. Kane
Michael J. Kane
3300 Trindle Rd.
Camp Hill, PA 17011
Telephone: 717-524-4415

Date: August 6, 2001

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA

ss

COUNTY OF CUMBERLAND

I, Ralph McAllister, hereby swear and affirm under penalty that the following is true to the best of my information, knowledge and belief

1. During all times alleged in Plaintiff's complaint, I was employed by the Dauphin County Sheriff as Chief Deputy Sheriff and served at the pleasure of the Sheriff.
2. The Dauphin County Sheriff is an independently elected official under Pennsylvania Law.
3. In my capacity as Chief Deputy Sheriff, I had supervisory authority only over persons employed by the Dauphin County Sheriff and no other.
4. Employees of the Dauphin County Sheriff may only be hired or terminated by the Sheriff.
5. During the period alleged in the Plaintiff's Complaint, Plaintiff was employed by the Dauphin County District Attorney.
6. The Dauphin County District Attorney is an independently elected official under Pennsylvania Law.
7. At all times alleged in the Complaint, Plaintiff was accountable only to the District Attorney and his appointed staff.
8. Neither I nor the Dauphin County Sheriff had any authority, control or influence, de facto or de jure, over any employees of the Dauphin County District Attorney or the conditions of their employment.

9. As an employee of the Dauphin County Sheriff, I have never had supervisory authority over Plaintiff.

10. During the period alleged in the complaint and at all other times, I had no de facto authority nor did I ever exercise any authority, control or influence over Plaintiff's employment with the Dauphin County District Attorney's Office, including Plaintiff's job responsibilities, assignments, pay, discipline, working conditions, work hours, leave or otherwise.

11. During the period of time alleged in Plaintiff's complaint, I did not wear a uniform or display a gun or display any other symbols of authority over Plaintiff.

12. At no time during the period alleged in Plaintiff's complaint did I use or threaten to use the authority of my office to influence, control or in any way affect Plaintiff's employment with the Dauphin County District Attorney's Office.

13. During my employment with the Dauphin County Sheriff's Department, I had no influence or input into the management of the Dauphin County District Attorney's Office.

Date: 3 AUG. 2001



Ralph McAllister

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CINDY L. RIGG,

Plaintiff,

CIVIL NO. 4:CV-01-0967
JUDGE MCCLURE

v.

COUNTY OF DAUPHIN,
DAUPHIN COUNTY SHERIFF'S
DEPARTMENT, and
RALPH MCALLISTER

Defendants.

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that he is a person of such age and discretion as to be competent to serve papers.

That on August 6, 2001 he served a copy of the attached

MOTION TO DISMISS OR, IN THE
ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

by placing said copy in a postpaid envelope addressed to Plaintiff's and Co-Defendants' Counsel, at the place and address stated below, and by depositing said envelope and contents in the United States Mail.

Addressee:

Spero T. Lappas
Law Office of Spero T. Lappas
205 State Street
P.O. Box 808
Harrisburg, PA 17108-0808

Frank J. Lavery, Jr.
Lavery Faherty, Young and Patterson, PC
301 Market Street, Suite 800
P.O. Box 1245
Harrisburg, PA 17108-1245


Michael J. Kane